

STATE OF MICHIGAN
COURT OF APPEALS

SHARON VELEZ,

Plaintiff,

v

DOLLAR TREE STORES, INC., and
TOIAMBERA LASHOWN GARDNER,

Defendants,

and

SECURITAS SECURITY SYSTEMS USA, INC.,

Defendant/Cross Plaintiff-Appellant,

and

LAMAR COMPANIES,

Defendant/Cross Defendant-Appellee.

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant/cross plaintiff Securitas Security Systems USA, Inc., appeals by delayed leave granted the trial court's orders dismissing its cross-claim against Lamar Companies and denying its motion for summary disposition on its cross-claim. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Velez filed suit alleging that she was a business invitee inside defendant Dollar Tree Stores, Inc., when she was attacked by defendant Gardner. Lamar owned the premises leased by Dollar Tree, and pursuant to a contract with Lamar, Securitas provided security services for the premises. Plaintiff alleged assault and battery against Gardner (Count I),

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negligence against Dollar Tree (Count II), negligence and gross negligence against Securitas (Counts III and IV),¹ and assault and battery against Securitas (Count V).

Securitas filed a cross-complaint against Lamar, asserting that pursuant to its contract with Lamar, it was entitled to indemnification from Lamar against the claims made by plaintiff. The contract² on which Securitas relied provided in part:

(e) [Lamar] agrees to indemnify, defend, and hold [Securitas] harmless from and against any claims made by a third party(s), including, but not limited to, injury, death or damages or loss of property, arising from [Securitas'] negligent acts or omissions, including those relating to the hiring, firing, training, supervision, or retention of Personnel by [Securitas], its agents or employees.

Securitas moved for summary disposition of its cross-claim pursuant to MCR 2.116(C)(8) and (10), arguing that pursuant to the contract, it was entitled to indemnification from Lamar. The trial court denied the motion as premature.

The trial court granted summary disposition in favor of Dollar Tree, Securitas, and Lamar as to plaintiff's claims. Thereafter, Securitas filed a second motion for summary disposition pursuant to MCR 2.116(C)(10) of its cross-claim, and again argued that its contract with Lamar entitled it to indemnity. Securitas asserted that it incurred expenses in the amount of \$33,274.32 in defending against Counts III and IV of plaintiff's complaint, and contended that it was entitled to judgment against Lamar in that amount.

Lamar moved to dismiss Securitas' cross-claim, arguing that it had no duty to indemnify Securitas for deliberate acts of assault and battery committed by Securitas employees, and that Securitas should properly seek indemnification from Dollar Tree.

The trial court denied Securitas' motion for summary disposition, reasoning that the contract between Securitas and Lamar did not specify that Lamar was obligated to reimburse Securitas for defense costs. The trial court granted Lamar's motion to dismiss Securitas' cross-claim.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An indemnity contract is construed in accordance with the general rules for contract construction. Contractual indemnity depends on the terms to which the parties have agreed. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 351; 686 NW2d 756 (2004). If the terms of an indemnity contract are unambiguous, interpretation of the contract is a question of law, and the court must discern the intentions of the parties by reference to the

¹ Plaintiff did not differentiate her allegations of negligence and gross negligence.

² Lamar entered into the contract with Burns International Security Services Corporation, the predecessor to Securitas.

contract alone. *Hubbell, Roth & Clark, Inc v Jay Dee Contractors, Inc*, 249 Mich App 288, 291; 642 NW2d 700 (2002).

Securitas argues that the trial court erred by denying its motion for summary disposition of its cross-claim and dismissing the cross-claim. Securitas admits that although pursuant to the contract Lamar had no obligation to defend or indemnify it for vicarious liability based on an intentional tort, as alleged by plaintiff in Count V, Lamar did have such an obligation with respect to the claims of negligence asserted in Counts III and IV of the complaint.

We agree, and reverse the trial court's orders dismissing Securitas' cross-claim and denying Securitas' motion for summary disposition of its cross-claim. Plaintiff claimed, *inter alia*, that Securitas negligently trained its employees, and that as a result she was injured. This claim clearly fell within the scope of events for which Lamar contracted to defend and indemnify Securitas. *Hubbell, supra*. The contract requires Lamar to "defend" and "indemnify" Securitas against such claims. No language in the contract indicates that the inclusion in a complaint of a type of claim that is not covered by the contract, such as vicarious liability for an intentional tort, renders the entire contract a nullity. Furthermore, language to the effect that Lamar was required to "defend" Securitas against claims included within the scope of the contract is unambiguous, and indicates that if such a claim arose, Securitas could reasonably expect to have its defense expenses paid by Lamar. The contract does not specify that the duty to "defend" attaches only if a claim is tried. Under the contract, Securitas could reasonably expect to recover funds expended in defending this action. See *Redfern v RE Dailey & Co*, 146 Mich App 8, 19; 379 NW2d 451 (1985).

Reversed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra